

§ 595.103

on the basis of service as a civilian employee.

(c) Physicians employed and paid under title 38, United States Code, and Commissioned Corps officers of the Public Health Service under title 42, United States Code, are not eligible for physicians' comparability allowances.

[44 FR 40876, July 13, 1979, as amended at 58 FR 65537, Dec. 15, 1993; 64 FR 72458, Dec. 28, 1999; 69 FR 27817, May 17, 2004]

§ 595.103 What requirements must agencies establish for determining which physician positions are covered?

(a) The head of each agency must determine categories of physician positions for which there is a significant recruitment and retention problem, and physicians' comparability allowances may be paid only to physicians serving in positions in such categories.

(b) In determining categories of physician positions, the head of each agency must, as a minimum, establish as separate categories the following types of positions:

(1) Positions primarily involving the practice of medicine or direct service to patients, involving the performance of diagnostic, preventive, or therapeutic services to patients in hospitals, clinics, public health programs, diagnostic centers, and similar settings, but not including positions described in paragraph (b)(3) of this section;

(2) Positions primarily involving the conduct of medical research and experimental work, including the conduct of medical work pertaining to food, drugs, cosmetics, and devices (or the review or evaluation of such medical research and experimental work), or the identification of causes or sources of disease or disease outbreaks;

(3) Positions primarily involving the evaluation of physical fitness, or the provision of initial treatment of on-the-job illness or injury, or the performance of preemployment examinations, preventive health screenings, or fitness-for-duty examinations; and

(4) Positions not described by paragraph (b) (1), (2), or (3) of this section, including positions involving disability evaluation and rating, the performance of medicolegal autopsies, training activities, or the administration of med-

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ical and health programs, including the administration of patient care or medical research and experimental programs.

(c) The agency head may establish as separate categories any additional subdivisions of these four categories of positions, based on any factors the agency head determines relevant. These may include such factors as the location, grade or level, and medical specialization of the positions, and the level of qualifications sought by the agency for physicians in the category.

[44 FR 40876, July 13, 1979, as amended at 69 FR 27817, May 17, 2004]

§ 595.104 What criteria are used to identify a recruitment and retention problem?

The head of each agency may determine that a significant recruitment and retention problem exists for each category of physician position established under § 595.103 only if the following conditions are met with respect to the category:

(a) Such evidence as vacant positions, an unacceptably high turnover rate, or other positive evidence indicates that the agency is unable to recruit and retain physicians for the category;

(b) The qualification requirements being used as a basis for considering candidates for the vacant positions in the category do not exceed the qualifications that are actually necessary for successful performance of the work of the positions in the category;

(c) The agency has made efforts to recruit qualified candidates for any vacant positions in the category and to retain physicians presently employed in positions in the category; and

(d) A sufficient number of qualified candidates is not available to fill the existing vacancies in the category at the rate of pay the agency may offer if no comparability allowance is paid.

[44 FR 40876, July 13, 1979, as amended at 69 FR 27817, May 17, 2004]

§ 595.105 What criteria must be used to determine the amount of a physicians' comparability allowance?

(a) The amount of the comparability allowance payable for each category of physician positions established under